

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 99 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NAVNITLAL RANCHODLAL

Appearance:

1. INCOME TAX REFERENCE No. 99 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 30/10/2001

ORAL JUDGEMENT

In this reference at the instance of the revenue,
the following question is referred for our opinion in
respect of assessment year 1981-82:-

"Whether, interest under section 216 amounting to
Rs.52,455/- was leviable ?"

2. The assessee is an individual. The assessee
filed a statement of advance tax in form No.28-A on
10-9-1980 showing an income of Rs.2,08,790/-.
Subsequently, he filed an estimate in form No.29 on
13-3-1981 showing an income of Rs.28,70,000/-. On the
basis of these figures, the Assessing Officer was of the
view that the assessee had paid substantially less
advance tax than the advance tax payable in the first two
installments. He accordingly levied interest under
section 216 amounting to Rs.52,455/-. The CIT (Appeals)
allowed the assessee's appeal. The Tribunal upheld that
order. Hence, this reference at the instance of the
revenue.

3. We have heard Mr Akil Kureshi learned counsel for
the revenue. Though served, none appears for the
respondent-assessee.

4. The Tribunal has found that the assessee filed
the statement in form No.28-A on 10-9-1980 on the basis
of an income of Rs.2,08,790/- being the returned income
for the immediately preceding assessment year i.e.
1980-81. As against the above figure, the figures for
the other assessment years were as under:-

Asst.year	Assessed income	Returned income	Assessment order date
1977-78	Rs.1,69,480/-	-	15-19-79
1978-79	(Assessed Rs.1,93,010		20-3-81
1979-80	figures not known)	Rs.1,98,820 -	

After filing form No.28-A, when the assessee came to know
that the income was likely to substantially exceed the
income shown in the aforesaid form, the assessee filed an
estimate in form No.29 on 13-3-1981 showing the income of
Rs.28,70,000/- as provided for under sec. 209 A(4).

The reasoning which appealed to the Tribunal was that the interest under sec. 216 was leviable only if the advance tax payable was underestimated but underestimate of the income chargeable to tax would not entail levy of interest.

5. Mr Kureshi learned counsel for the revenue made a grievance against the aforesaid reasoning and submitted that for whatever reason, if the advance tax paid at the time of the first two installments was substantially less than the advance tax payable, levy of interest was justified.

6. In the facts of the case as recorded by the Tribunal, we are not in a position to find fault with the finding given by the Tribunal that the estimate of advance tax given by the assessee was in accordance with the provisions of subsection (1) of section 209 A of the Act applicable to the relevant assessment year. We are however not in a position to examine the contention urged on behalf of the revenue as recorded in the preceding para because the facts on record do not indicate whether the assessee had earned substantial income before payment of the first or the second installment of advance tax. It is required to be noted that in all the earlier years i.e. three assessment years preceding the assessment year under consideration, the returned income of the assessee was less than Rs.2 lacs and his assessed income for the assessment year 1977-78 was only Rs.1,69,480/for which the assessment order was passed on 15-10-1979. Apart from this, it is required to be noted that an assessee may earn substantial income by way of sale of immovable property or on sale of shares or any other windfall income in the last quarter of the year and such an assessee cannot be accused of underestimating his income or advance tax estimate when the first two installments of advance tax became due and payable. In view of absence of any facts on record to show the nature of income and the period during which the assessee earned substantial income in excess of Rs.2 lacs, we are not in a position to examine the aforesaid contention of Mr Kureshi on merits.

7. In so far as the facts on the record of this reference stand, we do not find that the Tribunal committed any error of law in upholding the order of the CIT (Appeals) cancelling the levy of interest under sec. 216 of the Act.

8. In view of the above discussion, our answer to

the question is in the negative i.e. in favour of the assessee and against the revenue.

9. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-